

Notice of Allowability

Application No.

09/719,219

Applicant(s)

BERNARDON ET AL.

Examiner

Art Unit

Celia Chang

1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 05/05/05 after final and examiner's amendment attached.
2. ☐ The allowed claim(s) is/are 1-3,9,12 and 18-20.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date attached.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Celia Chang
Primary Examiner
Art Unit 1625

DETAILED ACTION

1. Applicants filed an after final amendment dated May 5, 2005. Claims 4-8, 10-11 and 13-14 have been canceled. Claims 1-3, 9, 12, 15-20 as currently amended are pending.

2. *Restriction*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-3, 9, 12, drawn to arylselenium pyridinyl compounds, classified in class 546, subclass 298.
- II. Claims 15-17, drawn to pharmaceutical composition, classified in class 514, subclass various, depending on species election.
- III. Claims 18-20, drawn to method of body or hair hygiene and compositions thereof, classified in class 424, subclass 401.

The inventions are distinct, each from the other because patentability of compound per se depends on the structural arrangement and chemical properties of the material. Patentability of the pharmaceutical composition depends on the active ingredients and the *pharmaceutical* carrier with particular effective dosage. Patentability of method of body and hair hygiene and composition for such cosmetic purpose depends on the active ingredients and cosmetically acceptable carrier for the purpose of hygiene. The components of the different compositions are independent and patentably distinct and restriction is proper.

During a telephone conversation with Ms. Baumeister on Jun 13, 2005 a provisional election was made without traverse to prosecute the invention of group I, claims 1-3, 9, 12. Affirmation of this election was made by applicant in submission of an extension of time for the entry of examiner's amendment. Claims 18-20 being drawn to method of body hygiene and hair with cosmetic composition dependent exclusively on the elected compound are rejoined with the elected compounds. Claims 15-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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3. *Examiner's Amendment*

Authorization for this examiner's amendment was given in a telephone interview with M. Katherine Baumeister on Jun. 13, 2005.

The nonelected claims 15-17 are canceled without prejudice against applicants' filing of a divisional application.

4. *Reason for Allowance*

The following is an examiner's statement of reasons for allowance:

Applicants have canceled claims 15-17 and amended claims 1-3, 9, 12, 18-20 clearly drawn to the elected compounds and free from 112 issues. Compounds of claims 1-3, 9 and 12 are neither anticipated nor rendered obvious by the art of record. Claims 1-3, 9, 12, 18-20 are allowed.

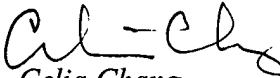
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Celia Chang whose telephone number is 571-272-0679. The examiner can normally be reached on Monday through Thursday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

OACS/Chang
Jun 14, 2005


Celia Chang
Primary Examiner
Art Unit 1625